IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.2154 and 2155 of 2002

E.K.Lingamurthy .. Petitioner in W.P.No.2154 of 2002
L.Parameswari .. Petitioner in W.P.No.2155 of 2002

versus

1. The Settlement Commissioner (IT&WT)
   Additional Bench
   488-489, Anna Salai
   Chennai.

2. The Commissioner of Income Tax
   Race Course Road
   Coimbatore. .. Respondents-1 & 2 in both the writ petitions

PRAYER: Writ petitions filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records of the first respondent in No.641/CBE/41/97-IT, 641/CBD/42/97-IT, quash the impugned order dated 29.11.2001 and to consequently direct the respondent to grant set off of unabsorbed loss and unabsorbed depreciation against the undisclosed income in a block assessment.

For petitioners : Mr.R.Krishnamurthy
Senior Advocate for
Mr.P.J.Rishikesh

For respondents : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

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ORDER

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

The petitioners in these writ petitions are income tax assessees. The Income Tax Department conducted a search under Section 132 of the Income Tax Act, 1961, on 11.10.1996 in the business premises of the assessees as well as their family members who were partners in various firms. The assessment proceedings were initiated under Chapter XIV-B of the Income Tax Act. The writ petitioners, as well as the Group, filed a consolidated petition before the Settlement Commission, the first respondent herein in the writ petition, for the block period commencing from 1.4.1986 to 11.10.1996.

2. The Settlement Commission admitted the application under Section 246-D of the Income Tax Act under order dated 27.2.1998.

3. The petitioners claimed unabsorbed depreciation and business loss for the Assessment Years 1995-96 and 1996-97, comprised of the block period. The claim was rejected by the Settlement Commission, first respondent herein. Under Order dated 19.11.2001, referring to Section 158-BB(4) and Explanation-A to Section 158-BA(2), the Settlement Commission rejected this plea. It viewed that the assessment made under Chapter XIV-B shall be in addition to the regular assessment in respect of each previous year included in the block period. Consequently, the unabsorbed loss and current depreciation claimed in the regular return should be determined and allowed to be carried forward for future adjustment only in the regular assessments. Consequently, the claim for adjustment of unabsorbed depreciation against the undisclosed income in a block assessment would not be considered.

4. The Settlement Commission further referred to the claim for depreciation allowable in the regular returns and held that the unabsorbed depreciation had been declared in the returns as available for carrying forward to the subsequent year. Consequently, it added a sum of Rs.18,92,966/- to the undisclosed income in the year 1995-96 and Rs.27,50,910/- added in the next assessment year 1996-97 as undisclosed income. In the view thus taken on the interpretation of the provisions, the Settlement Commission rejected the plea and quantified the liability.

5. Aggrieved of this, the petitioners have preferred these writ petitions, contending that the block period covered under the settlement should be treated as a single previous year and hence, the losses suffered during one part of the block period should be set off or adjusted against the income earned in the other part. Consequently, the assessees pleaded that the unabsorbed current depreciation was not hit by the provisions contained in Section 158-BB(4) of the Act. The assessees claimed that the rejection of such a claim would result in discrimination between cases

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like the assessees and others where there was no return of income filed.

6. Learned senior counsel appearing for the petitioner submitted that the first respondent erred in misinterpreting the provisions of Section 158-BB(4). Referring to Section 158-B Clause (b), he submitted that unabsorbed depreciation and business loss could not be included or made as addition to the undisclosed income. He further submitted that going by the provisions of Section 158-BB(4), there was no prohibition in setting off the unabsorbed loss as well as the unabsorbed depreciation being set off against the income of several years comprised in the block period. Going by Section 158-BB(1), the income of different previous years comprised in the block period are to be aggregated to find out the total undisclosed income relating to the block period. He submitted that taking the quantification of income assessable to a logical end, the unabsorbed depreciation and the loss suffered during the part of the block period need to be set off or adjusted against the income earned during the remaining part of the block period. In this connection, learned senior counsel placed reliance on the decision rendered by the Mumbai Bench of the Income Tax Appellate Tribunal in the case of B.D.A. LIMITED Vs. ASSISTANT COMMISSIONER OF INCOME TAX reported in 1998 (Vol.65) INCOME TAX TRIBUNAL DECISIONS 501, wherein, the plea taken by the assessee was accepted to grant the relief in the block assessment under Chapter XVI-B.

7. We do not agree with the submission made by the learned senior counsel on the interpretation of Section 158-BB, nor with the view expressed in the decision referred to above.

8. Chapter XIV-B is a special procedure for assessment of search cases. The provisions contained therein prescribe the method of quantification of undisclosed income and the rate of tax applicable therein. Section 158-BA starts with a non-obstante clause that notwithstanding anything contained in any other provisions of the Act, where after 30th June 1995, a search is initiated under Section 132, or where the books of accounts or other documents or assets or requisitions under Section 132-A in the case of any person, then the assessing officer shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B. Section 158-BA(2) Explanation declares for the removal of doubts, that the assessment under Chapter XIV-B shall be in addition to the regular assessment in respect of each previous year included in the block period. This only makes it clear that under the Explanation to Sub Clause (a), the intention is that the statute segregates the entire gamut of block assessment from that of a regular assessment to the effect that each one of them have independent and distinct existence for the purpose of assessment and enforceability; so too, sub clause (b) and sub-clause (c). As may be seen from Section 158-BB providing for computation of undisclosed income for the block period it is clearly stated in the explanation to sub section (1) under sub clause (a) that the total income or loss of each previous year shall, for the

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purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of Section 32.

9. Section 158-BB(4) states that for the purposes of block assessment, losses brought forward from the previous year under Chapter VI, containing inter alia Sections 70 to 80, or unabsorbed depreciation under Section 32(2) shall not be set off against the undisclosed income determined in the block assessment under Chapter XIV-B, but may be carried forward for being set off in the regular assessment. Thus, if at all the assessee is entitled to a set off of either losses, or on unabsorbed depreciation, such set off could be allowed only in the regular assessment in respect of which the assessee has filed his return.

10. Admittedly, in this case, the assessee has filed his return and claimed set off of unabsorbed depreciation as well as loss carried forward. A reading of the provisions makes it abundantly clear as to the object of providing for assessment in such cases, a procedure distinct for assessing number of years in a search case as a block period as distinct from a regular assessment for each assessment year. The provisions also make clear its intention to deviate from the regular method by the non-obstante clause provided under Section 158-BA. The provisions of the Act thus giving no room for doubt as to the manner of computation, we do not find any justification to read the provisions otherwise to grant the relief.

11. The provisions under Chapter XIV-B do not indicate even a remote possibility for considering a claim of set off or brought forward losses under Chapter VI or unabsorbed depreciation under Section 32(2) to be considered in the determination of undisclosed income. Considering the clear provisions, it is not possible to read the provisions as projected by the petitioner herein.

12. The provisions under Chapter XIV-B are so clear to the degree of precision as to its intent that even a person reading in bad faith cannot misunderstand. In the above circumstances, we reject the prayer and consequently, dismiss the writ petition.

13. Learned senior counsel referred to the order of the Bombay Tribunal dated 29th September 1997 (B.D.A. LIMITED Vs. ASSISTANT COMMISSIONER OF INCOME TAX) reported in 1998 (Vol.65) INCOME TAX TRIBUNAL DECISIONS 501. The decision of the Tribunal deals with a case, where, under Section 158BB(1)(c), the assessee had not filed the Return till the date of search. The losses computed for those years under the block assessment would come under consideration for set off against the income computed in respect of the years falling under the block period. The facts herein show that the assessee did file a Return and claimed a set

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off of the loss as well as the unabsorbed depreciation under Section 32 (2). As we had already pointed out, given the scope of sub section (4) of Section 158-BB, we reject the plea of the petitioner herein. In the circumstances, the writ petitions stand dismissed. There will, however, be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ksv

To:
1. The Settlement Commissioner (IT&WT)
Additional Bench
488-489, Anna Salai
Chennai.

2. The Commissioner of Income Tax
Race Course Road
Coimbatore.

+ 1 CC To Mr. P.J.RISHIKESH, Advocate SR NO.15418

+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.15301

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